



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2005

Mr. John C. West
General Counsel, Office of the Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2005-01644

Dear Mr. West:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219423.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department" and "inspector general," respectively) received a request for all information related to case file numbers 02-1018 and 02-0102. You state that the inspector general will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, and 552.134 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the inspector general's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the

¹ Although the inspector general also claims that the submitted information is excepted from disclosure under section 552.029 of the Government Code, this section is not an exception to disclosure but is instead a list of eight categories of information that must be released when the information concerns an inmate who is confined in a facility operated by or under contract with the Texas Department of Criminal Justice. See Gov't Code § 552.029.

specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office written comments stating the reasons why each exception that you raised would allow the information to be withheld within fifteen business days of receiving the request as required by section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In this instance, section 552.108 does not constitute a compelling reason to withhold information. *But see* Open Records Decision No. 586 at 3 (1991) (need of another governmental body to withhold information under predecessor to section 552.108 provided compelling reason to withhold information). Therefore, none of the submitted information may be withheld pursuant to section 552.108. Because sections 552.101, 552.102, 552.117, 552.1175, and 552.134 can provide compelling reasons to withhold information, we will consider your arguments regarding these exceptions.

Because section 552.134 is potentially the most broad, we consider its applicability first. Section 552.134 pertains to information about inmates of the department and provides in pertinent part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.029 of the Government Code states:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract

with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

....

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). You state, and the submitted information reflects, that the information concerns inmates confined in a facility operated by or under contracts with the department. Thus, section 552.134 is applicable to the submitted information. However, section 552.134 is explicitly made subject to section 552.029. Under section 552.029(8), basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. The submitted information contains information regarding alleged criminal conduct involving inmates. *See generally* Pen. Code §§ 22.01, 22.021. Accordingly, while the inspector general must generally withhold the submitted information under section 552.134, it must release certain basic information regarding the alleged crimes pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.

We note, however, that the inspector general must withhold some of the listed basic information under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Accordingly, the inspector general must withhold the identifying information of the inmates who are the victims of the alleged crimes under section 552.101 of the Government Code. The inspector general must release all other basic information regarding the alleged crimes pursuant to section 552.029(8). The remainder of the submitted information must be withheld under section 552.134.

In summary, with the exception of identifying information of the inmates who are the victims of the alleged crimes, which must be withheld under section 552.101 of the Government Code, the inspector general must release all other basic information regarding the alleged crimes pursuant to section 552.029(8). The remainder of the submitted information must be withheld under section 552.134. As our ruling is dispositive, we need not consider your remaining claimed exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

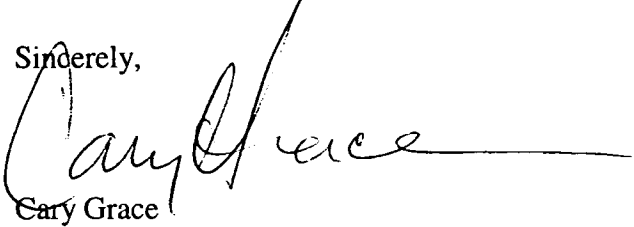
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 219423

Enc. Submitted documents

c: Mr. Dave Michaels
Staff Writer, Austin Bureau
The Dallas Morning News
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(w/o enclosures)